IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1464 of 2007

Saravanakumar .. Petitioner

Vs

1. The State of Tamil Nadu
   by its Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Chennai-600 009.

2. The Commissioner of Police
   Greater Chennai,
   Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.C.C.Chellappan
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner - detenu was incarcerated by order dated 31.7.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda and confined at Central Prison, Chennai.

2. Challenging the detention order, the detenu has come forward with the above writ petition seeking to call for the records

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in connection with the order of detention made in proceedings No.357/2007, dated 31.7.2007, to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

3.1. The order of detention dated 31.7.2007 came to be passed based on the ground case said to have taken place on 20.7.2007 at about 8.00 p.m., registered on the basis of the complaint lodged by one Muthu before the Inspector of Police, D1 Triplicane Police Station. On 20.7.2007, at about 8.00 p.m., when the complainant was attending to his work at his mobile canteen, the detenu herein and one Murugadoss @ Suresh took tiffin. When the complainant demanded money for the tiffin taken by them, the detenu fisted the complainant over his face and threatened him at the knife point and Murugadoss @ Suresh took out the eatables kept in the said mobile cart and threw the same on the road. The public who were taking tiffin in the said mobile canteen noticing the atrocious activities, rushed to apprehend the detenu and his associate, but they were threatened at the knife point. The public ran for safer places out of fear of danger to their lives and properties. The normalcy in that area was totally dislocated and thus taking advantage of the panic situation, Murugadoss @ Suresh took away Rs.500/- from the cash box and both of them escaped from the spot. However, the police personnel who were on rounds with the help of public arrested the detenu and his associate. Based on the complaint, a case in Crime No.1530 of 2007 for the offences punishable under Sections 341, 323, 427, 392 and 397 read 506(ii) IPC was registered.

2.2. On being satisfied that the detenu had acted in a manner prejudicial to the maintenance of public order and after taking into consideration the four adverse cases registered against the detenu, viz., Crime Nos.1492, 1493, 1515 and 1523 of 2007 on the file of D1 Triplicane Police Station for the offences punishable under Sections 379, 380, 341, 323 and 392 IPC, the impugned detention order was clamped on the detenu.

4. The learned counsel for the petitioner challenges the impugned order of detention on the ground of non application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the sponsoring authority while making remand requisition before XIII Metropolitan Magistrate, Chennai-8, referred to all adverse cases in Crime Nos.1492, 1493, 1515 and 1523 of 2007 and also the ground case in Crime No.1530 of 2007, but, however, remand order was passed only in respect of the ground case.

5. On examining the records, we find that, while making remand requisition before the learned XIII Metropolitan Magistrate,

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Egmore, the Sponsoring Authority referred to all the adverse cases and also the ground case, however, remand order was passed only in respect of the ground case. Apart from that, the detention order states that there is real possibility of the detenu coming out on bail by filing bail application, while the fact remains that there are no details available on record to show whether or not the detenu was remanded in respect of those adverse cases also by independent orders of the Magistrate. Therefore, we are of the view that the subjective satisfaction arrived at by the detaining authority is vitiated as a result of non-application of mind on the part of the detaining authority to the above fact. Consequently, the impugned order of detention is liable to be quashed .

Accordingly, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in the proceedings dated 31.7.2007 against the detenu is quashed the and the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai-8.

3. The Superintendent
   Central Prison, Puzhal,
   Chennai-66.

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4.The Joint Secretary to Govt. Public
(Law and Order) Department,Fort St. George, Chennai-9.

5. The Public Prosecutor
High Court, Madras.

+1cc to Mr.C.C.Chellappan, Advocate Sr 73481

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